Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
@Communications, Inc.	)	CC Docket No. 02-4
Petition for Declaratory Ruling	)	
	)	

COMMENTS OF
Level 3 Communications, LLC

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I. INTRODUCTION AND SUMMARY

On January 18, 2002, the Federal Communications Commission (FCC or Commission) released a public notice seeking comment on a Petition for Declaratory Ruling filed by @Communications, Inc. (@Communications). Level 3 submits these comments in support of @Communications' request. In response to the Petition, the Commission should affirm its interconnection "rules of the road" that provide requesting carriers the right to establish a single physical point of interconnection (POI) per Local Access and Transport Area (LATA) and require each originating carrier to bear the responsibility and cost for transport of traffic to the interconnecting carrier at the POI.

As discussed below, by requiring @Communications to bear the full cost of transport from the POI to Sprint's local calling area, Sprint's condition has the effect of nullifying the competitive benefits of the Commission's "rules of the road" regarding interconnection. The

Communications Act of 1934, as amended,[1] and the Commission's implementing rules grant competitive carriers, not incumbents, the right to select the number and location of interconnection points within the LATA. Under 47 U.S.C. § 251(c)(2)(B),[2] an incumbent local exchange carrier (ILEC) must provide interconnection at any technically feasible point within its network selected by a competitive carrier. There is no corresponding right in the Act or in the FCC rules given to ILECs to designate a POI, or to impose conditions that have the effect of requiring establishment of a POI. To give Sprint, or any other ILEC, this right without express authorization under the Act would ignore the structure Congress carefully designed for the respective rights and obligations of competitive carriers and ILECs. Moreover, Sprint's attempt to force @Communications to bear the cost responsibility between each Sprint end office and the POI on Sprint's side of the interconnection point without regard to the relative use each party is making of the facility to route its originating traffic to the POI means that @Communications will bear the cost of traffic originated by Sprint, a result clearly not contemplated by Congress or the FCC.

II. CURRENT COMMISSION RULES REGARDING POINTS OF INTERCONNECTION AND ALLOCATION OF TRANSPORT COSTS

The Sprint requirement, as documented in the @Communications petition, would require @Communications, as a terminating carrier to bear all transport costs for carrying Sprint customer-generated calls from Sprint's local calling area to the physical POI. Likewise, the Sprint requirement would require @Communications, as an originating carrier, to bear all transport costs beyond the physical POI into each Sprint local calling area. Such a

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1 47 U.S.C. § 151 *et seq*

2 Under Section 251(c)(2)(B), ILECs have the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network ... at any technically feasible point within the carrier's network." 47 U.S.C. §251(c)(2).

requirement would render the physical POI meaningless as a demarcation point of responsibility, and place a substantial financial barrier to entry in front of competitive carriers.

Level 3 agrees with @Communications that the Commission's current rules require each carrier to bear the burden of delivering traffic originated by its customers to the other carrier's network and recover such costs in the rates charged to its end users. In its Notice of Proposed Rulemaking regarding a unified intercarrier compensation regime,[3] the Commission sought comment on, among other issues, the appropriate method of allocating transport costs and who should bear the financial responsibility for interconnection facilities if the Commission adopts a bill and keep interconnection pricing regime.[4] Although the Commission raised this issue in the *Intercarrier Compensation NPRM*, it did so in the context of proposing a revision of the current rules. If the Commission were to reinterpret its rules to permit the ILEC to charge the interconnecting carrier for the costs of transport from the ILEC end office to the CLEC POI, it would render meaningless the Commission's "rules of the road." Such an interpretation has the effect of permitting the ILEC to choose the interconnection points that mirror its network architecture, thus shifting the ILEC's transport and switching costs associated with such an arrangement to the interconnecting carrier in a manner that deters competitive carriers from entering the market.

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[3] *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation NPRM*).

[4] *Id.* at 9627-28, paras. 46-50.

A. The Commission Must Affirm a Single Point of Interconnection Per LATA

As Level 3 argues in its comments in the *Intercarrier Compensation NPRM*, to avoid introducing inefficiencies into the deployment of competitive networks, the Commission must affirm the "rules of the road" with regard to the number and location of interconnection points between carriers and the financial responsibility to carry traffic to these points. These rules must ensure that the interconnection responsibilities do not become a barrier to entry by requiring competitive carriers to build or lease unnecessary or duplicative transport facilities, and that the scope of the geographic area is large enough to permit innovation in service packages and calling scopes.

In the Telecommunications Act of 1996, Congress created differing levels of interconnection obligations between competitive and incumbent carriers. Section 251(c)(2)(B) requires incumbent LECs "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network."[5] In the *Local Competition Order*, the Commission found that section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points.[6] The Commission has reiterated this point and

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5 47 U.S.C. §251(c)(2).

6 *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, *First Report and Order,* 11 FCC Rcd. 15499, 15608, para. 209 (1996) (*Local Competition Order*), aff'd in part and vacated in part sub nom. *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC,* 120 F.3d 753 (8th Cir. 1997) aff'd in part and remanded, *AT&T v. Iowa Utils. Bd.,*525 U.S. 366 (1999).

noted specifically that competitive LECs can choose a single technically feasible POI per LATA.[7]

The Commission should affirm that ILECs must permit a single POI of the competitive carrier's choosing within each LATA.[8] If the Commission were to reinterpret its interconnection rules consistent with the Sprint requirement detailed in the @Communications petition, the competitive carrier would have to build transport to each and every ILEC calling area, or alternatively it would have to contract with the ILEC or another carrier to perform that function. Even if one assumes that the ILEC would comply with the requirements of the Act and lease transport to its competitors at forward-looking cost-based rates – an assumption contrary to fact given the standard practice of many incumbents to charge access rates for local interconnection facilities – this creates its own inefficiencies. In essence, it calls for competitors to duplicate the inefficient historical incumbent LEC "hub and spoke" network –a network structure that is not required to deliver services today.[9]

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7 *In the Matter of Application of SBC Communications, Inc. Pursuant to Section 271 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, 15 FCC Rcd 18354 at para. 78 (rel June 30, 2000) (*Texas 271 Order*).

8 As noted in Level 3's comments in the *Intercarrier Compensation NPRM*, to fairly assess transport costs so that the incumbent LEC does not bear the burden of carrying all traffic to a single interconnection point, Level 3 also supports Commission established thresholds where significant traffic volumes justify establishing additional POI. *Intercarrier Compensation NPRM*, Level 3 Comments at 29-30.

9 *See e.g.*, *Local Competition Order*, 11 FCC Rcd at 15605, para. 202 (emphasizing Congress' intent to obligate the ILEC to accommodate the new entrant's network architecture).

B. The Commission Must Affirm Responsibility to Originate Traffic to the POI

The second rule, confirmed by the Commission in its *TSR Wireless Order,* is that each carrier is responsible for delivering its originating traffic to the POI and recovers such costs in the rates it charges to its end-users.[10] Under the disputed requirements, Sprint recognizes that the CLEC should be allowed to designate a single physical POI per LATA; however, its corollary, that the CLEC must then pay to have calls brought to that POI violates the second of the FCC's rules of the road, namely that each LEC bears the burden of delivering traffic originated by its customers to the other carrier's network and recovers such costs in the rates charged to its end users. As stated in the Commission's *TSR Wireless Order*:

> In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.[11]

Sprint's obligation to deliver its originating traffic to @Communication's network under these rules is not conditioned on the CLEC picking up such traffic within the local calling area in which it originated. As noted above, nowhere in the Act or the Commission's rules can one find anything that says that an ILEC such as Sprint should have or does have the ability to designate the point where traffic is to be exchanged. In fact, the Commission has

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[10] *TSR Wireless, LLC et al. v. US West Communications, Inc., et al.,* File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order, 15 FCC Rcd 11166 (2000) (*TRS Wireless Order*).

[11] *Id.* at 11186, para. 34 (emphasis added).

considered arguments such as those made by Sprint. In considering the application of SBC to provide in-region long distance service in Kansas and Oklahoma, the Commission was faced with the question of whether an SBC policy to require payment for transporting a call to a POI outside the local calling area was appropriate under the Act. The Commission noted that:

> we caution SWBT from taking what appears to be an expansive and out of context interpretation of findings we made in our SWBT Texas Order concerning its obligation to deliver traffic to a competitive LEC's point of interconnection. In our SWBT Texas Order, we cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection. We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network. These rules also require that an incumbent LEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier.[12]

The Commission's *Kansas and Oklahoma 271 Order* confirms that Commission rules do not permit Sprint or any other incumbent LEC to shift the costs of taking a locally-dialed call to a POI to the competitive company that will terminate that call. Instead, the responsibility for taking the call to the POI – wherever the POI may be within the LATA and whomever the terminating carrier might be – falls squarely on the shoulders of the originating carrier.

Level 3 recognizes that the Commission raised the issue regarding financial responsibility for interconnection facilities again in its order granting Verizon's 271 application to provide interLATA services in Pennsylvania. In that Order, the Commission

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[12] *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, at para. 238 (2001) *(Kansas and Oklahoma 271 Order)* (emphasis added).

found Verizon to be in compliance with the Commission's one POI per LATA rule despite the fact that Verizon distinguishes between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities.[13] It is clear, however, that this finding did not modify or eliminate the two interconnection "rules of the road." Instead, the Commission noted that although traditionally, the physical interconnection point is the same as the billing point,[14] the need to modify the current rule is under review in the Commission's *Intercarrier Compensation NPRM*.[15] Any suggestion that the Commission modified its interconnection rules in the context of a 271 proceeding would be to suggest that the Commission predetermined the issue previously raised in the *Intercarrier Compensation NPRM*. To the contrary, as the *Kansas and Oklahoma 271 Order* makes clear, the Commission's current rules – pending completion of the *Intercarrier Compensation NPRM* – prohibit the ILEC from shifting its responsibilities for transporting its own originating traffic to the POI selected by a competitive carrier. To rewrite these rules in advance of further findings in the *Intercarrier Compensation NPRM* would not only be inappropriate as a procedural matter, but would be contrary to the public interest. As Level 3 argued in its comments in the *Intercarrier Compensation NPRM*, requiring a carrier to build out for interconnection or buy transport facilities from the incumbent prior to turning up service may only have the perverse result of deterring competitive entry, as carrier

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[13] *In the Matter of Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001) (*Pennsylvania 271 Order*).

[14] *Id*. at n.17.

[15] *Id*. at para. 100.

concentrate their entry strategy on those calling areas where they will accumulate enough traffic to justify the investment in the interconnection facilities needed to reach there.[16]

Finally, permitting Sprint to require interconnecting carriers to pay the full cost of transport on the ILEC side of the POI, despite the fact that Sprint may be originating a portion of the traffic on these trunks, contradicts not only the "rules of the road" as set forth in the *TSR Wireless Order*, but also the Commission's initial findings in the *Local Competition Order* regarding relative usage of two-way trunks. As explained by the Commission, where interconnecting carriers are using two-way trunks to send traffic to one another, each carrier should be responsible only for the cost of the trunks in an amount proportionate to its relative usage of the trunks for its originating traffic.[17] In other words, if @Communications is originating 40% of the minutes of traffic over the two-way trunk, and Sprint is originating 60% of the minutes of traffic, @Communications should only be required to pay 40% of the cost of the transport on Sprint's side of the POI. Permitting Sprint to charge @Communications for the entire cost of the two-way trunk to each local calling area renders meaningless the physical POI from a cost responsibility perspective, and excuses Sprint, as an originating party, from bearing appropriate responsibility for the cost of its two-way trunks.

III. CONCLUSION

For the foregoing reasons, Level 3 urges the Commission to affirm its "rules of the road" addressing every LEC's interconnection obligations, clarify that carriers must bear the cost of bringing originating traffic to the POI, and grant @Communications' petition for declaratory ruling. Together, the "rules of the road" ensure that competitive carriers are able

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[16] *Intercarrier Compensation NPRM*, Level 3 Comments at 27-28.

[17] *Local Competition Order*, 11 FCC Rcd at 16027-28, para. 1062.

to establish a competitive market presence in the most efficient manner and are not burdened with transport rates that fail to reflect how each provider is using the facilities.

Respectfully submitted,

/s/ submitted electronically

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